

IC 20-4-4

Chapter 4. Territory Annexation in Community School Corporations

IC 20-4-4-1

Definitions

Sec. 1. As used in this chapter, the following terms shall have the following meanings:

(a) "School corporation" shall be any school corporation created pursuant to IC 20-4-1 and shall also be any other school corporation established under any other statute of the state of Indiana, which school corporation has common boundaries with any school corporation or corporations formed pursuant to IC 20-4-1, but shall not include any public school corporation located in whole or any part in a county containing a consolidated city.

(b) "Annex", "annexing", "annexation", and "school annexation" shall refer to any action whereby the boundaries of any school corporation are changed so that additional territory, constituting all or a part of any one (1) or more other school corporations, is transferred to it.

(c) "Acquiring school corporation" shall be the school corporation which acquires territory as a result of annexation.

(d) "Losing school corporation" shall be any school corporation which loses territory to an acquiring school corporation by annexation.

(e) "Annexed territory" shall be the territory acquired by an acquiring school corporation as a result of annexation from a losing school corporation.

(f) "Resolution" of a school corporation shall refer to a resolution duly adopted by its governing body.

(Formerly: Acts 1963, c.296, s.1.) As amended by P.L.2-1988, SEC.477.

IC 20-4-4-2

Annexations authorized

Sec. 2. Subject to the limitations and procedure set out in this chapter, any school corporation may annex territory from any other school corporation by resolutions of the acquiring and losing school corporations as provided in section 3 of this chapter.

(Formerly: Acts 1963, c.296, s.2.) As amended by P.L.2-1988, SEC.478.

IC 20-4-4-3

Annexation procedure

Sec. 3. An annexation may be effected by any school corporation as follows:

(a) Both the acquiring and the losing school corporations shall each adopt a substantially identical annexation resolution. This resolution shall contain the following items:

(1) The name of the acquiring school corporation after the effective date of the annexation, which name may differ from the name of the acquiring corporation at the time of the adoption of the resolution.

(2) A description of the annexed territory. Such description shall as near as reasonably possible be by streets and other boundaries known by common names and need not be in addition by legal description unless such additional description is necessary to identify the annexed territory. No notice shall be defective if there is a good faith compliance with this section and if the area designated may be ascertained with reasonable certainty by persons skilled in the area of real estate description.

(3) The time the annexation takes place.

(4) Any terms and conditions facilitating education of pupils in the annexed territory, in the losing school corporation or in the acquiring school corporation. Such terms may provide for, but shall not be limited to, the continued attendance by children in the annexed territory at schools in the losing school corporation for specified periods of time after annexation on a transfer basis. In such instances transfer tuition for such children shall be paid by the acquiring school corporation to the losing school corporation in the manner and at the rates provided by the statutes of the state of Indiana governing the computation and payment of transfer tuition costs.

(5) Disposition of assets and liabilities of the losing school corporation to the acquiring school corporation; allocation between the acquiring and losing school corporations of subsequently collected school taxes levied on property in the annexed territory; and the amount, if any, to be paid by the acquiring school corporation to the losing school corporation on account of property received from the latter. Such disposition, allocation and amount shall be equitable.

(b) After the adoption of such resolution, notice shall be given by publication in both the acquiring and the losing school corporations setting out the text of the resolution, together with a statement that such resolution has been adopted and that a right of remonstrance exists as provided in this chapter. It shall not be necessary to set out the remonstrance provisions of this chapter, but a general reference to a right of remonstrance with a reference to this chapter shall be sufficient. The annexation shall take effect within thirty (30) days after such publication, or at the time provided in the resolution, whichever is later, unless within such period a remonstrance is filed in the circuit or superior court of the county where the annexed territory or any part thereof is located, by registered voters residing in the losing school corporation at least equal in number to the greater

of the following:

- (1) ten percent (10%) of the number of registered voters residing in the losing school corporation; or
- (2) fifty-one percent (51%) of the number of registered voters residing in the annexed territory.

(Formerly: Acts 1963, c.296, s.3; Acts 1969, c.304, s.1.) As amended by P.L.2-1988, SEC.479.

IC 20-4-4-4

Notice requirements

Sec. 4. (a) The notice by publication required by section 3 of this chapter shall be made two (2) times, a week apart, in two (2) daily newspapers of general circulation, published in the English language and of general circulation in the acquiring school corporation and in the losing school corporation. Where there is only one (1) or no such daily newspaper in either such school corporation, a weekly newspaper or newspapers may be used. Where there is only one (1) such daily and/or weekly newspaper, publication in such paper shall be sufficient. Where any newspaper is of general circulation in both corporations, any publication in such newspaper shall qualify as one (1) of the required publications in each of the school corporations. Publication may be made jointly by the losing and acquiring school corporations. The remonstrance period shall run from the second such publication.

(Formerly: Acts 1963, c.296, s.4.) As amended by P.L.2-1988, SEC.480.

IC 20-4-4-5

Remonstrances; form; filing; contents

Sec. 5. (a) A remonstrance under section 3 of this chapter must be in the following or a substantially similar form:

"The undersigned hereby remonstrate against the annexation of the following described territory situated in _____ County, Indiana, whereby it would be transferred from _____ (the losing corporation) to _____ (the acquiring corporation):

(Description of the annexed territory sufficient to identify it.)".

The remonstrance may be filed in any number of counterparts. Each counterpart shall have attached to it the affidavit of the person circulating it that each signature appearing thereon was affixed in his presence and is the true and lawful signature of the person who made it. The person who makes the affidavit need not be one (1) of the persons who signs the counterpart to which it is attached. The remonstrance must be accompanied by a complaint filed by one (1) or more of the remonstrators (who shall be treated as a representative of the entire class of remonstrators), and signed by the remonstrator or the remonstrator's attorney, stating the reasons for the remonstrance. The reasons for the remonstrance are limited to

the following:

- (1) There is a procedural defect in the manner in which the annexation is carried out which is jurisdictional.
- (2) The annexed territory does not form a compact area abutting the acquiring corporation.
- (3) The benefits to be derived from the annexation are outweighed by its detriments, taking into consideration the respective benefits and detriments to the schools and of the pupils residing in the acquiring school corporation, the losing school corporation, and the annexed territory.
- (4) The disposition of assets and liabilities of the losing corporation, the allocation of school tax receipts between the two (2) school corporations and the amount to be paid by the acquiring school corporation as set out in the annexation resolution are inequitable. Except with respect to subdivision (1), the allegations may be made in the statutory language.

(b) The plaintiff in a remonstrance under section 3 of this chapter must be the person whose name appears on the complaint. The defendants in a remonstrance under section 3 of this chapter shall be both the acquiring and the losing corporations. Service of process shall be made on the defendants as in other civil actions.

(c) For the purposes of determining whether the petition was timely filed, the time of filing is the time of filing with the clerk without regard to the time of issuance of the summons. If the thirtieth day falls on Sunday, a holiday, or any other day when the clerk's office is not open, the time shall be extended to the next day when the office is open.

(d) The issues in a remonstrance under section 3 of this chapter are made up by the complaint. The allegations in the complaint shall be treated as denied by each defendant. No responsive pleading need or may be filed except that any defendant may, if appropriate, file a motion to dismiss the remonstrance on the ground:

- (1) that the requisite number of qualified remonstrators have not signed the petition;
- (2) that the remonstrance was not timely filed; or
- (3) that the complaint does not state a cause of action.

No responsive pleading to this motion need or may be filed. With respect to a motion under subdivisions (1) and (2), the allegations of the pleading shall be treated as denied by the remonstrators. For purposes of determining whether there are the requisite number of qualified remonstrators, a person may not withdraw the person's name after a remonstrance has been filed or add the person's name to the remonstrance. Any person may, however, at the trial of the cause and in support or derogation of the substantive matters in the complaint, introduce into evidence a verified statement that the person wishes the person's name added to or withdrawn from the remonstrance. The court may either hear all or a part of the matters raised by the motion to dismiss separately or may consolidate for trial

all or a part of the matters with the matters relating to the substance of the case. No complaint shall be dismissed for failure to state a cause of action if a fair reading of the complaint supports one (1) of the grounds for remonstrance provided in subsection (a). An amendment of the complaint may be permitted in the discretion of the court if it does not state a new ground of remonstrance.

(e) The trial of a remonstrance shall be conducted as other civil cases by the court without the intervention of a jury on the issues raised by the complaint, a motion to dismiss, or both. A change of venue from a judge, but no change of venue from the county, shall be permitted. The court shall expedite the hearing of the case. The court's judgment, except with respect to any matter raised under subsection (a)(4), shall be either:

- (1) that the annexation shall take place;
- (2) that the annexation shall not take place; or
- (3) that the remonstrance shall be dismissed.

If the court finds that the remonstrators have proved any of the reasons for the remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation shall not take place. Unless the remonstrators have proved at least one (1) of the reasons for a remonstrance described in subsection (a)(1) through (a)(4), the court's judgment shall be that the annexation shall take place. With respect to any matter raised under subsection (a)(4), the court's judgment may be either that the disposition, allocation, and amount set out in the annexing resolution is equitable or that it is inequitable. In the latter event the court in the court's judgment shall provide for an equitable disposition, allocation, and amount. Costs shall follow judgment. Appeals may be taken from any judgment of the court in the same manner as appeals are taken in other civil cases.

(Formerly: Acts 1963, c.296, s.5.) As amended by P.L.2-1988, SEC.481; P.L.1-1991, SEC.128.

IC 20-4-4-6 Repealed

(Repealed by Acts 1976, P.L.97, SEC.3.)

IC 20-4-4-6.1

Adoption of plans for governing bodies of school corporations

Sec. 6.1. (a) Within sixty (60) days after the annexation takes place, each governing body of the acquiring and losing school corporations shall adopt a plan for itself determining the manner in which its governing body shall be constituted. The plan shall be adopted in accordance with the requirements and procedures of IC 20-4-10.1, except as set out in subsection (b).

(b) The adoption of a plan by the governing body in accordance with IC 20-4-10.1-5, and its submission to the state board of education under IC 20-4-10.1-9, shall be the only procedure required

when an existing plan is changed as follows:

- (1) All school board members are elected at large, and there are no school board member residency districts.
- (2) School board members are elected from school board member residency districts, the annexed territory is added to or deleted from one (1) or more districts.
- (3) A school board member is appointed from a given area or district, the annexed territory is added to or deleted from one (1) or more districts or areas.
- (4) A board member is elected solely by the voters in a school board member district, but where the addition or deletion of the annexed territory to or from an existing district does not constitute a denial of equal protection of the laws.

Where a school corporation elects or appoints members of its governing body both from a school board member district encompassing the entire school corporation and from smaller districts, the governing body of the acquiring school corporation shall add the annexed territory both to the district consisting of the entire school corporation and to one (1) or more smaller districts. In a comparable situation, the losing school corporation shall delete the annexed territory both from the district consisting of the entire school corporation and from any smaller district or districts. The change in the plan shall become effective upon its approval by the state board of education. The application of this subsection shall not limit the initiation of, or further changes in, any plan under IC 20-4-10.1.

As added by Acts 1976, P.L.97, SEC.1. Amended by P.L.20-1984, SEC.66.

IC 20-4-4-7

Disposition of assets and liabilities of losing school corporations; allocation of school tax receipts and amount to be paid by acquiring school corporation; standards

Sec. 7. (a) With respect to whether the disposition of the assets and liabilities of the losing school corporation, allocation of school tax receipts and the amount to be paid by the acquiring school corporation is equitable, the court subject to the provisions of subdivision (b) shall be satisfied that the annexing resolution conforms substantially to the following standards:

- (1) The acquiring school corporation shall assume a portion of all installments of principal and interest on any indebtedness of the losing school corporation (other than current obligations or temporary borrowing) which fall due after the end of the last calendar year in which the losing school corporation is entitled to receive current tax receipts from property tax levies on the property on the annexed territory. Such portion shall consist of the following: (i) all such installments relating to any indebtedness incurred in connection with the acquisition or

construction of any building located in the annexed territory, and (ii) a proportion of all such installments relating to any other indebtedness which is the same proportion as the valuation of the real property in the annexed territory bears to the valuation of all the real property in the losing school corporation, as the same is assessed for general taxation immediately prior to annexation.

(2) The acquiring school corporation shall make the payments and assume the obligations provided for school corporation acquiring territory and/or building or buildings under IC 21-5-10.

(3) Unless the losing school corporation shall consent to some other allocation: the portion of the general fund moneys collected by the losing school corporation shall not be allocated to the acquiring school corporation in a greater amount than would be awarded if such two (2) corporations were respectively the "original school corporation" and the "annexing school corporation" within the meaning of IC 20-4-16, using the method therein provided for allocating the special school and tuition fund moneys.

(b) Such standards shall not be applicable to the extent the losing and acquiring school corporations otherwise agree in a situation where all or a majority of the students in the annexed territory have been transferred from the losing to the acquiring school corporation for the five (5) school years immediately preceding the transfer. Such agreement, as between school corporations, shall not, however, prejudice the rights of bondholders or lessors whose rights as against the losing and acquiring school corporations shall, upon enforcement, be allocated between them in accordance with subsection (a)(1) and (2).

(Formerly: Acts 1963, c.296, s.6; Acts 1975, P.L.229, SEC.2.) As amended by Acts 1976, P.L.97, SEC.2.

IC 20-4-4-8

Effective date of annexation in case of remonstrance; limitations on new annexation proceeding following adverse judgment

Sec. 8. (a) In the event any remonstrance is filed on any ground other than that set forth in section 5(a)(4) of this chapter annexation shall not become effective until final judgment in the remonstrance suit. Judgment shall not be considered to be final until the time for taking an appeal has expired, or, if an appeal is taken within such time, until final judgment in the appeal. A judgment of the trial court dismissing a remonstrance shall be considered to be a final judgment, subject to the provisions of the preceding sentence. In the event such judgment is against the annexation, no further annexation of the annexed territory may take place for a period of two (2) years from the date such remonstrance was filed. This shall not, however, prevent either the acquiring or the acquiring and losing school

corporations from rescinding the annexation resolution; and in such event the suit shall be dismissed without prejudice. In such latter event such two (2) year prohibition shall not apply unless a subsequent annexation resolution is adopted primarily for the purpose of harassment and not for some other purpose, such as the correction of procedural irregularities or a substantial change in the annexed territory and/or the annexation resolution.

(b) Where the remonstrance relates solely to any matter raised under section 5(a)(4) of this chapter, the annexation shall take effect at the time provided under section 3 of this chapter.

(Formerly: Acts 1963, c.296, s.7.) As amended by P.L.2-1988, SEC.482.

IC 20-4-4-9

Repeal of conflicting laws; supplemental effect of chapter

Sec. 9. All laws or parts of laws in conflict with this chapter are hereby repealed. This chapter shall not, however, be construed to repeal any part of IC 20-4-1, or any statute concerning the consolidation of two (2) or more school corporations, to which this chapter shall be supplementary, except to the extent that IC 20-4-1 conflicts with the subsequent provisions of this section. No annexation that is undertaken pursuant to, or that results by operation of, any section of this chapter shall require, for its effectiveness, any approval of any county committee or state commission or committee created pursuant to, or referred to in, IC 20-4-1.

(Formerly: Acts 1963, c.296, s.8.) As amended by P.L.2-1988, SEC.483.

IC 20-4-4-10

Repealed

(Repealed by P.L.1-1989, SEC.75.)